

125 FERC ¶ 61,277
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER09-54-000

Midwest Independent Transmission
System Operator, Inc.

ER09-121-000
(Not Consolidated)

ORDER REJECTING LARGE GENERATOR
INTERCONNECTION AGREEMENTS

(Issued December 8, 2008)

1. In Docket Nos. ER09-54-000 and ER09-121-000, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed under section 205 of the Federal Power Act (FPA)¹ two non-conforming Large Generator Interconnection Agreements (Interconnection Agreements) among itself (as Transmission Provider), American Transmission Company LLC (American Transmission) (as Transmission Owner) and certain Interconnection Customers.² In this order, we direct Midwest ISO to revise the Interconnection Agreements so that they conform with Midwest ISO's current *pro forma*

¹ 16 U.S.C. § 824d (2006).

² Wisconsin Electric Power Company (Wisconsin Electric) is the Interconnection Customer in Docket No. ER09-54-000. In that docket, the Interconnection Agreement is designated as Original Service Agreement No. 1986 under the Midwest ISO's FERC Electric Tariff, Third Revised Vol. No. 1 (Wisconsin Electric Interconnection Agreement). EcoMet Wind, LLC (EcoMet Wind) is the Interconnection Customer in Docket No. ER09-121-000. In that docket, the Interconnection Agreement is designated as Original Service Agreement No. 1984 under the Midwest ISO FERC Electric Tariff, Third Revised Vol. No. 1 (EcoMet Wind Interconnection Agreement).

Generator Interconnection Agreement. We then reject the now conforming agreements, since conforming agreements need not be filed, and require that they instead be reported in Midwest ISO's quarterly reports.

I. Background

Standardized Interconnection Procedures and Agreements

2. In Order No. 2003,³ the Commission issued standardized interconnection procedures and agreements for the interconnection of large generating facilities. The Commission's policy was to minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.

3. While Order No. 2003 was largely successful in accomplishing the Commission's goals, backlogs of interconnection requests for new or increased generation developed in Midwest ISO's queue. To remedy this situation, Midwest ISO and its stakeholders created the Interconnection Practices Task Force to identify and correct parts of Midwest ISO's queue management procedures that were not functioning effectively. As a result of this stakeholder process, Midwest ISO proposed comprehensive changes designed to make the queue process more transparent and efficient.

4. The Commission conditionally accepted Midwest ISO's proposed revisions to its Generator Interconnection Procedures and *pro forma* Generator Interconnection Agreement, effective August 25, 2008.⁴ The changes the Commission conditionally accepted include: (1) addition of a Pre-Queue Phase; (2) addition of a Fast Track Process; (3) revisions to the amount and timing of deposits; (4) revisions to the milestones that projects must meet to move forward; and (5) limitations on the ability to suspend the project. In addition, the Commission accepted a transition period so that the new process could eliminate the queue backlogs as soon as possible. The transition

³ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007) (Order No. 2003).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,183 (2008) (Queue Reform Order).

period gives projects already in the queue 60 days to meet the milestones and deposit requirements. It distinguishes between early and late stage interconnection requests by making projects for which a Facilities Study has been started subject only to the new suspension rules, while projects for which a Facilities Study has not been started must comply with all of the new provisions.⁵

II. The Filings

5. In both filings, Midwest ISO proposes to use the old (pre-Queue Reform Order) *pro forma* Large Generation Interconnection Agreement as a model. Midwest ISO therefore seeks waiver of the new (post-Queue Reform Order) *pro forma* Generation Interconnection Agreement to permit the Interconnection Agreements to proceed subject to the old Large Generation Interconnection Procedures and *pro forma* Large Generation Interconnection Agreement. Midwest ISO states that the Interconnection Agreements were negotiated and executed before the Queue Reform Order was issued.

6. Midwest ISO also proposes to add what it characterizes as non-conforming language to section 5.17.1 and Article 9.6.1 of the Interconnection Agreements. The revisions to section 5.17.1 are designed to reflect American Transmission's status as a limited liability company. In addition, Midwest ISO proposes to revise the last sentence of Article 9.6.1 so that it reads: "Unless demonstrated by the study as indicated in Appendix C, the requirements of this Article 9.6.1 shall not apply to wind generators." According to Midwest ISO, the language it proposes to include in the Interconnection Agreements that does not conform with Midwest ISO's old *pro forma* Large Generator Interconnection Agreement is similar or identical to language in Midwest ISO's new *pro forma* Generator Interconnection Agreement.

III. Notice of Filings and Responsive Pleadings

7. Notice of Midwest ISO's filing in Docket No. ER09-54-000 was published in the *Federal Register*, 73 Fed. Reg. 53,857 (2008), with interventions and protests due on or before September 19, 2008. Wisconsin Electric Company filed a timely motion to intervene.

8. Notice of Midwest ISO's filing in Docket No. ER09-121-000 was published in the *Federal Register*, 73 Fed. Reg. 65,844 (2008), with interventions and protests due on or before November 14, 2008. None were filed.

⁵ *Id.* P 90.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely unopposed motion to intervene serves to make the entity that filed it a party to the proceeding.

B. Substantive Issues

10. We reject Midwest ISO's request to base the Interconnection Agreements on the old (pre-Queue Reform Order) version of Midwest ISO's *pro forma* Large Generator Interconnection Agreement. The new (post-Queue Reform Order) *pro forma* Generator Interconnection Agreement took effect on August 25, 2008. Both Interconnection Agreements were executed after August 25, 2008.⁶ Therefore, we require Midwest ISO to revise both Interconnection Agreements so that they conform with Midwest ISO's new *pro forma* Generator Interconnection Agreement.

11. We note that by using the new *pro forma* Generator Interconnection Agreement, Midwest ISO will not need to use non-conforming language. As Midwest ISO acknowledges, the language in Articles 5.17.1 and 9.6.1 of the proposed Interconnection Agreements that does not conform with the old version of the *pro forma* Large Generator Interconnection Agreement actually conforms with the new *pro forma* Generator Interconnection Agreement.⁷ Specifically, the Midwest ISO proposed and the Commission accepted in the Queue Reform Order changes to Articles 5.17.1 and 9.6.1 so that Midwest ISO's new *pro forma* Generator Interconnection Agreement already includes language that is essentially identical to the language Midwest ISO proposes to include in the Wisconsin Electric and EcoMet Wind Interconnection Agreements. Because we are requiring Midwest ISO to use the new *pro forma* Generator

⁶ Midwest ISO states that the Interconnection Agreements were executed before the issuance of the Queue Reform Order. See Docket No. ER09-54-000 and ER09-121-000, Transmittal Letters at 2, footnote 1. However, the Wisconsin Electric Interconnection Agreement is dated and was executed on September 18, 2008 and the EcoMet Wind Interconnection Agreement is dated and was executed on September 11, 2008 (i.e., *after* the Commission issued the Queue Reform Order on August 25, 2008).

⁷ See, e.g., Docket No. ER08-121-000 Transmittal Letter at 3 and 6.

Interconnection Agreement, there is no need for Midwest ISO to use non-conforming language.⁸

C. Rejection of Conforming Agreement

12. In this order, we require Midwest ISO to revise the proposed Interconnection Agreements so that they conform with its new *pro forma* Generator Interconnection Agreement. A Generator Interconnection Agreement that conforms to the Midwest ISO's *pro forma* Agreement is only required to be reported in Midwest ISO's quarterly transaction reports.⁹ Therefore, we reject the Wisconsin Electric and EcoMet Wind Interconnection Agreements and require them to instead be included as conforming agreements in Midwest ISO's quarterly reports.

The Commission orders:

(A) Midwest ISO is directed to revise the Wisconsin Electric Interconnection Agreement to conform with Midwest ISO's new *pro forma* Generator Interconnection Agreement, as discussed in the body of this order.

(B) Midwest ISO is directed to revise the EcoMet Wind Interconnection Agreement to conform with Midwest ISO's new *pro forma* Generator Interconnection Agreement, as discussed in the body of this order.

⁸ Midwest ISO had already begun the Facility Studies related to the Wisconsin Electric and EcoMet Wind Interconnection Agreements when the new Generator Interconnection Procedures and new *pro forma* Generator Interconnection Agreements took effect on August 25, 2008. Consistent with the transition arrangements the Commission accepted in the Queue Reform Order, the only queue reform-related changes that apply to the proposed Interconnection Agreements are the new rules that allow suspension only under Force Majeure conditions, which are contained in the new *pro forma* Generator Interconnection Agreement. Other queue reform-related changes outlined in the new Generator Interconnection Procedures (e.g., study deposits and milestones) are not applicable. See Queue Reform Order, 124 FERC ¶ 61,183 at P 90.

⁹ See *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Statutes and Regulations, Regulations Preambles 2001-2005 ¶ 31,127 at P 7 (2002).

(C) The Wisconsin Electric and EcoMet Wind Interconnection Agreements, as revised, are rejected, and we direct Midwest ISO to include them in its quarterly transaction reports as conforming agreements.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.